IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 797 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BHAGVANDAS C PATEL

Versus

NANDKISHOR N THAKKAR

Appearance:

1. Criminal Appeal No. 797 of 1991

MR PRANAV G DESAI for the appellant.

NOTICE SERVED for Respondent No. 1

MR ANAND G BHATT for Respondent No. 2

MR MA BUKHARI, APP, for Respondent No. 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/07/2001

ORAL JUDGEMENT

1. The present appeal is preferred by the original complainant-Food Inspector of Baroda Municipal Corporation, Mr. B.C. Patel, against a judgment and

order passed by the learned Judicial Magistrate, First Class (Municipality), Baroda, on February 25, 1991, in Criminal Case No.4578 of 1984, acquitting present respondents No.1 and 2 of the offences punishable under Sections 7 and 16 of the Prevention of Food Adulteration Act.

2. The complainant-Food Inspector of Baroda Municipal Corporation lodged a complaint with the learned Judicial Magistrate, First Class (Municipality), at Baroda, on February 24, 1984, stating, inter alia, that respondent No.1 is the sole proprietor of Natvar Oil Depot situate at Wadi Shak Market, Baroda and trading in edible oils and vegetable Ghee. Respondent No.2 herein-original accused No.2 is the manufacturer of vegetable Ghee and edible oils and manufactures Sohil Brand Vanaspati Ghee.

2.1 On February 16, 1984, the complainant went to the shop of respondent No.1. Respondent No.1 was present at the shop. He found three tins of Sohil brand Vegetable Ghee in the shop with packing of 16.5 kgs. On inquiry, respondent No.1 informed that the said tins were purchased from respondent No.2. He also showed the relevant bill therefor.

2.2 The complainant summoned a Panch and purchased 1500 grams of Sohil brand Vanaspati from the sealed pack tin of Sohil brand Vanaspati, after breaking it open. After paying the price therefor, the purchased material was divided into three equal parts and placed into three dry and clean bottles. The bottles were then corked, sealed, wrapped and labelled. The sample was sent to the Public Analyst for analysis. On receipt of the report of the Public Analyst, it was found that the sample did not conform to the standards prescribed in the Food Adulteration Act and the Rules. The complainant, therefore, requested the Local (Health) Authority for granting permission to prosecute the accused persons-present respondents No.1 and 2. The Local (Health) Authority Authority granted consent for prosecution on February 24, 1984 and, on basis thereof, the complainant lodged the complaint on that very day.

2.3 Accused No.2 tendered an application for sending the sample to the Central Food Laboratory for analysis, which was sent as required under the provisions of law and the report of the Central Food Laboratory indicated that the sample was adulterated.

2.4 Charge was framed against the accused persons.

They pleaded not guilty to the charge and the trial was proceeded with. Considering the evidence led by the prosecution, the learned Magistrate came to a conclusion that the consent for prosecution granted by the Local Health Authority was not legal and, therefore, the accused persons deserved to be acquitted. Only on this ground, an order of acquittal came to be passed. Aggrieved by the said judgment and order, the Food Inspector-original complainant has approached this Court with this appeal.

3. Learned advocate Mr. Pranav Desai appearing for the appellant argued this matter vehemently. He has taken this Court through the record and proceedings. His contention is that the finding of the Trial Court is per se erroneous for the reason that for holding the order of consent as invalid or against law, the learned Trial Magistrate has held that the Local (Health) Authority has not assigned reasons for granting consent. Mr. Desai submitted that in light of the decision rendered in State of Gujarat v. Imtiyaj Haji Abdul Sattar, 1998(1) GLR 214, no reasons are required to be assigned and non-mentioning of reasons would not vitiate a consent for prosecution. He has also relied on decision of this Court in the case of Gangadhar Yashvant Ramekar v. Mukeshbhai B. Shah & Ors., 1999(2) GLH 1105 and decision of the Apex Court in Suresh H. Rajput v. Bhartiben Pravinbhai Soni, (1996) 7 SCC 199.

4. Mr. Bhatt, learned advocate appearing for respondent No.2, has opposed this appeal. He submitted that although the learned Magistrate has not recorded other reasons in the impugned judgment and order, there are other reasons which would invalidate the grant of consent by the Local Health Authority and, therefore, there is no reason to disturb the impugned judgment and order. Mr. Bhatt submitted that, if the order granting consent (Ex.70) is seen, it does not bear any date. There is no inward or outward number recorded therein. No forwarding letter is produced on record with which such order could have been or should have been forwarded. There is no seal of the Local Health Authority on the said order. The officer passing the order granting consent has not been examined and the deposition of the complainant, if perused, would indicate that he is not aware as to how the order (Ex,.70) came to his office. He has never gone to the office of the Local Health Authority and, therefore, the order granting consent for prosecution cannot be said to be a document duly brought on record through proper custody nor could it be said to have been duly proved. Mr. Bhatt, therefore, submitted

that this appeal may not be entertained. He also urged that, almost 16 to 17 years have lapsed ever since the prosecution has started and 11 years after the order of acquittal is recorded. Mr. Bhatt submitted that it cannot be said that the view taken by the learned Magistrate is impossible one and, therefore, this court may not entertain this appeal against the judgment and order of acquittal.

5. Mr. Bukhari appeared for respondent No.3 has opposed the appeal.

6. Respondent No.1, though served, has chosen not to contest this appeal.

7. Having given a thoughtful consideration to the contentions raised before this Court challenging the order, what emerges is that the order of acquittal is recorded by the learned Magistrate only on the basis of defect in the order granting consent issued by the Local Health Authority . The reason therefor assigned is that reasons are not shown in the said order. This reasoning, at this stage, cannot hold the ground. The decision of this High Court in the case of State of Gujarat v. Imtiyaj Haji Abdul Sattar, 1998(1) GL 214 (supra) can squarely be applied to the facts of the present case. In that case, in a similar situation, the Court observed that consenting authority is not required to record reasons while giving consent to prosecute. In that case, similar view was taken by the Trial Magistrate which was not upheld by this Court. The reasoning adopted by the learned Magistrate cannot be upheld here also.

8. However, Mr. Bhatt has drawn attention of this Court to certain other invalidating circumstances in respect of the order granting consent to prosecute. He has drawn attention of this Court to the deposition of the complainant. The complainant has categorically admitted that his office maintains inward and outward registers. He admits that the letter requesting for grant of consent for prosecution has not been outwarded. He has also admitted that there is nothing to indicate that the said letter was received by the Local (Health) Authority. It transpires from the record that the consent order (Ex.70) is order simpliciter, which runs thus:-

"O R D E R

I hereby give consent to the Food Inspector Shri B.C. Patel to prosecute

(1) Owner and Vendor: Nandkishor Natwarlal Thakkar, Natwar Oil Depot, Behind Wadi hSak Market, Baroda.

(2) Warrantor: Bhavnagar Electricity Co. Ltd., Oil & Vanaspati Division, Nirmalnagar, Bhavnagar.

for contravening the provision of the Prevention of Food Adulteration Act, 1954 as alleged in the above Report of the Food Inspector.

This consent is given after going through the analysis Report of Public Analyst and other pertinent papers and documents and the nature of offence committed by the alleged offenders, as required by Section 20 of the Food Adulteration Act, 1954.

Sd/-
The Local (Health) Authority
for Muni. Corporation, Area,
Baroda."

There is nothing on record to indicate as to how this order reached the office of the complainant. No forwarding letter is produced. The order Ex.70 does not contain any address or any reference either to the request letter or to the incident concerned. It also requires to be noted that Ex.70 does not bear any seal of the Local (Health) Authority. It is, therefore, difficult to conclude that Ex.70 is the consent order in respect of this very case.

9. May it be noted that although it is contended by Mr. Bhatt that the consent order does not bear a date, a date is mentioned just below the signature of the Local (Health) Authority which indicates 24th February and, therefore, the contention of Mr. Bhatt that it does not bear a date cannot be accepted. However, the date of consent is 24th February and the date of lodging the complaint is also 24th February, i.e. the complaint is lodged on that very day.

10. There is no endorsement on the order Ex.70 regarding receipt or inward number.

11. Thus, in view of the fact that the office of the Food Inspector, though maintains an inward/outward register, has admittedly not entered either the request letter for the consent in the outward register or the consent order in the inward register. No endorsements are found on either of the two regarding receipt. The date of the complaint and the consent order is the same. The complaint is handwritten. The officer granting the consent (Ex.70) has not been examined. All these factors taken collectively, raise a doubt about the authenticity of the consent, on basis of which the complaint is lodged and, therefore, in the peculiar facts of the case, this Court does not deem it fit to interfere with the judgment and order impugned herein after 17 years of prosecution. It cannot be said that the finding of the learned Magistrate holding the consent invalid, may be for different reasons, is an impossible one. The scope for entertaining an acquittal appeal being very limited and it having not been shown nor having been found that the verdict of the learned Trial Magistrate is manifestly erroneous and palpably unsustainable or perverse, the appeal deserves to be dismissed and the same is, therefore, dismissed.

[A. L. DAVE, J.]

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